

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

DAVID FRANK CORREIA, #1816895

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:16cv753

**ORDER OF DISMISSAL**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be dismissed with prejudice as untimely filed. Petitioner filed objections.

In Petitioner's objections, he does not dispute the fact that he untimely filed his petition. However, he reurges his argument that, although he pleaded guilty to the charge against him, he is actually innocent. To show actual innocence, a petitioner must provide evidence that was not available previously. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). As outlined in the Report, Petitioner fails to provide newly discovered evidence showing he is actually innocent. He also fails to show he is entitled to equitable tolling.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Petitioner fails to meet his burden to show that he timely filed his petition, that he is entitled to equitable tolling, or that he is actually innocent. Accordingly, the Court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is therefore **ORDERED** the petition is **DENIED** with prejudice. Additionally, a certificate of appealability is **DENIED**.

It is finally **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

**SIGNED this 26th day of September, 2019.**

A handwritten signature in black ink, reading "Amos Mazzant", written over a horizontal line.

AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE